

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:07CV477-01-MU

DAVID E. SIMPSON,)
)
Plaintiff,)
)
v.)
)
STALLING POLICE DEP'T, et. al.,)
)
Defendants.)
_____)

ORDER

THIS MATTER is before the Court on Petitioner's Motion for Default Judgment (Doc. No. 25), filed October 9, 2008; and Petitioner's Motion for Appointment of Counsel (Document No. 27), filed October 14, 2008.

Plaintiff has filed a motion requesting that the Court appoint counsel to assist him with his case. Appointment of counsel in civil cases is discretionary. Whisenant v. Yuam, 739 F.2d 160, 163 (4th Cir. 1984). Counsel should be appointed in "exceptional circumstances." Id.; Cook v. Bounds, 518, F.2d 779 (4th Cir. 1975). The existence of "exceptional circumstances" depends upon two factors: type and complexity of case and the ability of the pro se litigant to present his case. Whisenant, 739 F.2d at 163. At this time, Plaintiff is adequately representing himself.

In a separate filing, Plaintiff asks this Court to enter a default judgment against Defendants because he alleges that they have failed to respond to his Complaint. Defendant Kane has responded stating that he filed an Answer and Counterclaim on July 8, 2008. Defendant Kane further states that because it appears Plaintiff never received a copy of this filing he is including it as an exhibit.

The remaining Defendants have also responded asserting that they too have filed an Answer to the Complaint. A review of the docket sheet clearly reveals that all of the Defendants have responded to Plaintiff's Complaint. As such, Plaintiff's Motion for Default Judgment is denied.

However, as Plaintiff has not received a copy of Defendants' responses, this Court will extend his time period for responding to the counterclaim until twenty days from the filing of this Order.

THEREFORE IT IS HEREBY ORDERED that:

1. Plaintiff's Motion for Appointment of Counsel (Document No. 27) is **DENIED**;
2. Plaintiff's Motion for Default Judgment (Doc. No. 25) is **DENIED**;
3. The Clerk is directed to mail Plaintiff a copy of the Answer filed on July 16, 2008 (Doc. No. 22); and
4. Plaintiff has twenty days from the filing of this Order in which to respond to Defendant Kane's counterclaim.

Signed: October 17, 2008

A handwritten signature in cursive script, reading "Graham C. Mullen", written over a horizontal line.

Graham C. Mullen
United States District Judge

